

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

BAIL APPL. NO. 2346 OF 2023

CRIME NO.40/2022 OF EXCISE RANGE OFFICE, CHANGANACHERRY

PETITIONERS/ACCUSED NO.3:

AJAY THOMAS
AGED 21 YEARS
S/O ALBERT KURIAN@BENNY NARAKATHARA KARA,
KAVALAM, KUTTANAD, ALAPPUZHA, PIN - 688506

BY ADVS.
JOHNSON GOMEZ
S.BIJU (KIZHAKKANELA)
SANJAY JOHNSON
JOHN GOMEZ
ARUN JOHNY
DEEBU R.
ABIN JACOB MATHEW

RESPONDENT:

- 1 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE EXCISE INSPECTOR
EXCISE RANGE OFFICE, CHANGANACHERRY,
PUZHAVATH, CHANGANACHERRY P.O
KOTTAYAM, PIN - 686101

BY SRI.P.G.MANU, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
12.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Dated this the 12th day of March, 2023

The third accused in Crime No.40/2022 of Changanacherry Excise Range Office, Kottayam, is the petitioner herein and he seeks anticipatory bail in this petition.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. I have perused the relevant records placed by the learned Public Prosecutor.

4. The crux of the prosecution case is that, at about 6.00 p.m. on 25.9.2022, on the basis of a secret information received, the 1st accused was found in possession of 1.540 kgs of Ganja, inside the scooter kept in Yamaha showroom, by name, 'Bharat Motors'. On this premise, the prosecution alleges commission of offences punishable under Sections 20(b)(ii)(B), 60(3) and 29 of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act' hereinafter). The further allegation is that, the third accused also involved in possessing contraband and the search was initiated on getting such a secret information.

5. The learned counsel for the petitioner argued that the petitioner herein is arrayed as the third accused in this crime, without support of any materials and the one and only piece of evidence collected by the Investigating Officer, to implicate the petitioner, is the confession statement recorded as that of the first accused, from whom, 30 gm of Ganja was recovered at the time of his body search. It is submitted further that, even on meticulous reading of the recitals in the recovery mahazar, only hearsay information regarding possession and sale of Ganja by the petitioner, could be gathered. It is also submitted that, nothing recovered either from the person or

from the conscious possession or otherwise, from the petitioner. Therefore, the petitioner is absolutely innocent and his complicity is not all established in this crime.

6. Whereas, the learned Public Prosecutor would submit that, this crime was registered, based on a secret information received and recording the same, in tune with the mandate of Section 42(1) of the NDPS Act. It is submitted that, a person who was not inclined to disclose his name and address, reached and informed that Subin, S/o.Bitty brought 4 kgs of Ganja in Changanacherry, on a nearby day and he used to store Ganja inside the scooter kept in Yamaha showroom, by name, 'Bharat Motors'. It was also informed that, Ajay is the person, who had been helping Subin to deal with Ganja. It is submitted further that, thereafter, when the Investigating Officer reached near the Yamaha showroom, a person with the features of Subin, ran away and another person identified him as

Subin. Thereafter, Ajay, who was present at the place of occurrence, in a frightened manner, was searched and 30 gm of Ganja was seized and on further search, 1.51 kg of Ganja seized from the unregistered scooter, meant for sale, at the showroom. Summarizing the argument, the learned Public Prosecutor would submit that, starting from recording of information till recovery of contraband, the involvement of the petitioner could be foreseen and in such a case, grant of anticipatory bail would spoil the investigation.

7. On meticulous reading of the materials available, it is true that a person, who even not ready to disclose his name and address, given information as to sale of Ganja, by the petitioner, by keeping the same in a scooter, kept at Yamaha showroom, Bharat Motors, near Changanacherry. It is true that in the mahazar, it is stated that, when the investigation team about to reach Yamaha showroom, a

person, with characteristics of Subin, ran away and another person present therein identified him as Subin. Further, Amal Kumar, whose name also recorded in the secret information, was present and was questioned. But nothing recovered from his possession. Thereafter, 30 gm of Ganja was recovered from his pocket and 1.51 kg of Ganja was recovered from the scooter kept at the showroom. Eventhough 1.51 kg of Ganja was seized from the scooter, no relevant materials available in the records of the prosecution to show the rational nexus between the contraband and the petitioner. Prosecution case does not suggest the relationship between the petitioner and 'Bharat Motors', where from the contraband was recovered from an unregistered (brand new) scooter. However, the same is not a reason to hold that the prosecution allegation, as such, is false and the allegation as to involvement of the petitioner in this crime may be true. Therefore, effective and impartial investigation must

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go on and I leave the same to the domain of the Investigating Officer.

8. Since the factual aspects are as espoused, directing the petitioner to subject himself for interrogation, he can be enlarged on anticipatory bail.

In the result, this petition stands allowed. The petitioner is enlarged on anticipatory bail, on the following conditions:

- i. The petitioner shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question the petitioner for two days in between 10.00 a.m. to 3.00 p.m. In the event of his arrest, the Investigating Officer shall produce the petitioner before the Special Court on the date of arrest itself.
- ii. On such production, the Special Court shall release the petitioner on bail, on executing bond for Rs.50,000/- (Rupees Fifty Thousand only) by himself and by

two solvent sureties, each for the like sum to the satisfaction of the Special Court.

- iii. The petitioner shall co-operate with investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so. He shall meet the Investigating officer on all Wednesdays in between 10.00 a.m. to 3.00 p.m., for a period of two months.
- iv. The petitioner, shall not, intimidate the witnesses or interfere with the investigation in any manner.
- v. The petitioner shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.

Sd/-

A. BADHARUDEEN
JUDGE